REMARKS

Claim Summary

Claim 1 is amended to recite that the method is performed "at a subscriber." Claim 1 is further amended to recite that "tracking a number of collisions on the data channel" occurs "until the number of collisions reaches a threshold value." These changes are based at least on FIG. 5 and the accompanying description on page 3, lines 26-30 and page 4, lines 1 and 2 of the specification as filed. Thus, no new matter is added.

No amendment made is related to the statutory requirements of patentability unless expressly stated herein. No amendment is made for the purpose of narrowing the scope of any claim, unless Applicant had argued herein that such amendment is made to distinguish over a particular reference or combination of references. Any remarks made herein with respect to a given claim or amendment is intended only in the context of that specific claim or amendment, and should not be applied to other claims, amendments, or aspects of Applicant's invention.

Rejection of Claims 1-6 under 35 U.S.C. § 103 (a) as being unpatentable over US 6, 222,850 (Johnson) in view of US 5,740,167 (Taketsugu).

Applicant has amended the claims to clarify the invention. Applicant therefore respectfully requests reconsideration of the rejection of claims 1-6 under 35 U.S.C. § 103(a) as being unpatentable over Johnson in view of Taketsugu as herein amended.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Applicant respectfully submits that the combination of Johnson and Taketsugu does not teach or suggest all the claim limitations as set forth in independent claim 1, as amended. Specifically, independent claim 1 recites that "tracking a number of collisions on the data channel" occurs "until the number of collisions reaches a threshold value." In contrast, Johnson discloses that calculating the percentage of data packets that were transmitted with collisions occurs over a defined time interval, typically 4 seconds. See col. 4, lines 62-64. Johnson does not disclose calculating the number of collisions until the number of collisions reaches a threshold value rather, Johnson discloses calculating the number of collisions over a time interval. Thus, Johnson fails to disclose such a limitation.

Additionally, Applicant's amended claim 1 recites that tracking a number of collisions is performed "at a subscriber." In contrast, Johnson discloses that in a LAN network, a node or a station calculates the percentage of data packets that were transmitted with collisions. As is commonly known in the art, in a LAN network, a node is a connecting unit which interfaces the terminals to the network or to another node in the network. At most, Johnson's node or station may be equated to Applicant's central processor that provides service to the connected subscribers (terminals). See page 5, line 17 to page 6, line 11 of the Applicant's specification as filed. Thus, Johnson fails to disclose that at a subscriber, the method of tracking the number of collisions is performed.

Further, Taketsugu also fails to disclose the above limitations. Taketsugu discloses determining whether an error rate in a packet exceeds a threshold value. In other words, Taketsugu does not disclose determining the number of collisions on the data channel. Taketsugu, col. 5, lines 1-3. Thus, Taketsugu makes no mention of "tracking a number of collisions… until the number of collisions reaches a threshold value" as recited by Applicant's amended claim 1.

In addition, Applicant's amended claim 1 recites that "at a subscriber," the method of tracking the number of collisions is performed. In contrast, Taketsugu discloses that at a base station the method of determining an error rate is performed. Thus, Taketsugu fails to disclose such a limitation.

Since the combination of Johnson and Taketsugu fails to disclose Applicant's claimed invention as claimed in independent claim 1. Applicant respectfully requests withdrawal of the rejection of claim 1 under 35 USC 103(a). Applicant requests that claim 1 now be passed to allowance.

Dependent claims 2-6 depend from, and include all the limitations of independent claim 1, which are shown to be allowable for the reasons given above. Therefore, Applicant respectfully submits that dependent claims 2-6 are in proper condition for allowance and request that claims 2-6 may now be passed to allowance.

Rejection of Claims 7-9, 12, 13 and 15-18 under 35 U.S.C. § 103 (a) as being unpatentable over US 5,740,167 (Taketsugu) in view of US 2003/0235178 (Cai).

Applicant respectfully traverses the rejection of claims 7-9, 12, 13 and 15-18. Reconsideration is respectfully requested.

The Office Action states in page 5, item 5, "regarding claim 7, Taketsugu discloses a method of assigning a new channel…Taketsugu further discloses…the terminal will assign a new channel (col. 12, lines 37-49) as described by the instant application."

Applicant respectfully submits that the Taketsugu does not teach or suggest all the claim limitations as set forth in independent claim 7. Specifically, independent claim 7 requires "receiving a reassignment request from a subscriber" which is not taught or suggested in the Taketsugu.

Applicant has reviewed the rejection of claim 7 carefully and does not find a citation to Taketsugu that describes Applicant's claimed limitation of "receiving a reassignment request from a subscriber." In contrast, Taketsugu discloses receiving a select new channel signal from a base station. See col. 12, lines 36-39. Thus, Taketsugu makes no mention of receiving a select new channel signal from a subscriber.

Further, the Office Action on page 5, item 5, states that "Taketsugu fails to teach if the reassignment request is due to the fact the first data channel is loaded." Applicant respectfully agrees to the Office Action that such a limitation is missing in Taketsugu. The Office Action however seems to find such a limitation in Cai. The Office Action states that "[h]owever, Cai teaches a method of requesting a new channel in case of the first data channel is heavily loaded (page 1, [003])."

Applicant respectfully submits that Cai does not teach or suggest all the claim limitations as set forth in independent claim 7. Specifically, independent claim 7 recites "upon receipt of the reassignment request, assuming that the first data channel is loaded" which is not taught or suggested in Cai.

Applicant has reviewed the rejection of claim 7 carefully and does not find a citation to Cai that describes Applicant's claimed limitation to "upon receipt of the reassignment request," assuming that the first data channel is loaded. At most, Cai simply monitors the current data rate of a channel, and if the data rate of the channel is very large, reassignment of the channel is executed. In other words, Cai's current data rate is not monitored after receiving a reassignment request from a subscriber. See par. 003, lines 28-31. Thus, Cai does not disclose Applicant's limitation to assuming that the first data channel is loaded upon receipt of the reassignment request.

Therefore, the combination of Taketsugu and Cai does not teach or suggest the claim limitations to "receiving a reassignment request from a subscriber," or "upon receipt of the reassignment request" as required by independent claim 7, so the Applicant respectfully requests withdrawal of the rejection of claim 7 under 35 U.S.C 103. Applicant requests that claim 7 may now be passed to allowance.

Dependent claims 8, 9, 12, 13 and 15-18 are depend from, and include all the limitations of independent claim 7, which are shown to be allowable for the reasons given above. Therefore, Applicant respectfully submits that dependent claims 8, 9, 12, 13 and 15-18 are in proper

condition for allowance and request that claims 8, 9, 12, 13 and 15-18 may now be passed to allowance.

Rejection of Claims 10, 11 and 14 under 35 U.S.C. § 103 (a) as being unpatentable over Taketsugu in view of Cai and further in view of Johnson.

As mentioned above, Applicant respectfully submits that Taketsugu and Cai do not disclose "receiving a reassignment request from a subscriber," or "upon receipt of the reassignment request," assuming that the first data channel is loaded. Since Taketsugu and Cai do not teach or suggest such limitations, the combination of Taketsugu, Cai and Johnson also fails to disclose Applicant's claimed invention. Applicant respectfully requests withdrawal of the rejection of claims 10, 11 and 14 under 35 USC 103(a). Applicant requests that 10, 11 and 14 may now be passed to allowance.

Conclusion

Applicant has reviewed the other references of record and believes that Applicant's claimed invention is patentably distinct and nonobvious over each reference taken alone or in combination. Applicant respectfully requests that a timely Notice of Allowance be issued in this case. Such action is earnestly solicited by the Applicant. Should the Examiner have any questions, comments, or suggestions, the Examiner is invited to contact the Applicant's attorney or agent at the telephone number indicated below.

The Commissioner is hereby authorized to charge Deposit Account 502117, Motorola, Inc, with any fees which may be required in the prosecution of this application.

Respectfully submitted,

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